REMARKS

The last Office Action has been carefully considered.

It is noted that claims are rejected under 35 U.S.C. 102(b) over the U.S. patent to Strubbe.

After carefully considering the Examiner's grounds for the rejection of the claims over the art, applicants have substantially retained the original claims as they were.

It is respectfully submitted that the claims currently on file clearly and patentably distinguish the present invention from the prior art.

The patent to Strubbe applied by the Examiner relates to a combine harvester with a machine throughput control system for adjusting the amount of crop material passing through the machine by varying the ground speed depending on a grain loss signal of the combine to avoid an overload of the machine.

It is an object of the invention disclosed in the reference to overcome the problem that there is a finite time between the entrance of the crop material into the machine and the measuring of the grain loss associated with that in coming material.

The separator cylinder in the combine harvester disclosed in the patent to Strubbe can be interpreted as the first separating stage, in which the flow of crops is separated with a first selectivity, while the rotor housing 26 of the combine harvester of this reference can be interpreted as the second separating stage, in which the pre-cleaned flow is separated with a second selectivity. However, in the combine harvester disclosed in the reference neither the separator cylinder 22 nor the rotor housing 26 has a changeable selectivity, or means for controlling the first selectivity. The patent to Strubbe also does not disclose that the material rate from one device 22 to a following device 26 can be adjusted independently of the rate of the flow of crops.

It is an object and also an advantage of the invention disclosed in the present application, both of the method for separating of flow of crops and a device for separating of flow of crops in accordance with the present invention, to adjust the crop flow from the separating stage into the cleaning

stage depending on the grain loss of the cleaning stage but independently of the flow rate of the combine.

Claim 1 specifically defines a method for separating a flow of crops, which includes the step of controlling the first selectivity based on the at least one quantity independently from the flow rate of the flow of crops while claim 15 defines the device for separating a flow of crops, which comprises means for controlling the first selectivity independently from the flow rate of the flow of crops. These features are not disclosed in the patent to Strubbe.

The Examiner rejected the claims over this reference as being anticipated. In connection with this it is believed to be advisable to cite a decision in re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

> "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the reference does not disclose each and every element of the method of the present invention as defined in claim 1 and of

the device of the present invention as defined in claim 15, and therefore it is believed that the anticipation rejection should be considered as not tenable and should be withdrawn.

The patent to Strubbe also does not contain any hint or suggestion that the features analyzed herein above can be or should be provided in the solution disclosed in the reference. In order to arrive at the applicant's invention from the teaching of the reference, the reference has to be fundamentally modified exactly by including into it the new features which were first proposed by the applicant and now defined in claims 1 and 15. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

> Prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, such significant modifications can not be considered as obvious from the teaching of the reference and therefore any obviousness rejection should be considered also as not tenable with respect to claims 1 and 15.

The Examiner's attention is respectfully directed to the fact that the patent to Strubbe contrary to the Examiner's opinion does not disclose any grain loss sensor which produces a grain loss signal. The grain loss signal is determined by a grain loss algorithm, as disclosed in column 3, lines 7-8. This algorithm is in the form of formula which calculates the grain loss from grain separation signals received from three or more grain impact sensors placed along the threshing and separating mechanism and from sensors for measuring operating condition parameters as disclosed in column 3, lines 9-14 and column 4, lines 4-22. Thus, this feature of the present invention is also not disclosed in the patent to Strubbe and can not be derived from it as a matter of obviousness.

Claims 1 and 15 should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on the corresponding independent claims, they share their presumably allowable features, and therefore it is believed that they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

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